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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,718	12/18/2000	Jim Hugunin	5350 / 54771	5067

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EXAMINER

ALIMENTI, SUSAN C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 09/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,718

Applicant(s)

HUGUNIN, JIM

Examiner

Susan C. Alimenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 August 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-32 is/are pending in the application.
- 4a) Of the above claim(s) 19 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18, 20-24 and 26-32 is/are rejected.
- 7) ☒ Claim(s) 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 26 is objected to because of the following informalities: In line 2 of claim 26, change the word “allowing” to --allows--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 23, 24, 27, 28 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 23, the claim language seems to contradict itself, and confuses the subject matter. It is unclear how the scent receiving element can be “extending from” the end of the lure, which is defining a perimeter, and at the same time “conform” to that perimeter. Claims 24, 27 and 32 are also rejected as being dependent upon the subject matter of independent claim 23.

Regarding claim 28, it is not clear how the scent receiving element is “obstructed”. Fish attractant dispensing devices generally work in conjunction with a flow of water across the device in order to disperse the scent thus effectively baiting fish, therefore an obstruction would only serve to make the device inoperable.

Claim Rejections - 35 USC § 102

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

5. Claims 18, 20, 21, 26 and 28-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Mooers (US 6,061,947).

Mooers discloses the claimed invention as cited in claims 18, 20, 21, 26 and 28-31.

Mooers' fishing lure can be clearly seen in Figure 4 to comprise a "spoon-like" body portion, comprising body sections 44 and 46. The main body sections are best seen in Figure 7, where it is quite evident that they are "spoon-like" in structure. Mooers' lure further comprises a scent receiving element 40 that fits into cavity 56 in body section 46. Body portion 46 defines a plane and the scent receiving element 40 defines a similar plane parallel to the flat end walls of the cylindrical element 40. When element 40 is embedded in body section 46 the planes are *become* coplanar., or one cohesive aligned plane

Regarding claim 21, the scent receiving element 40 is embedded in and through the wall of body section 46, and is therefore accessible from either sidewall. With regard to claims 21 and 26, it can be clearly seen in Figure 6 that cap 54 pivots about pin 55 and is removable so to be repeatedly used to secure the scent receiving element in, and remove it from, the cavity 56.

Regarding claims 28-31, Mooers' lure ensures that the scent receiving element is unobstructed from water flow, and that it does not interfere with the motion of the lure. The

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element 40 is of a size and shape that conforms to the cavity 56 that it fits into it, and when the end caps 54 are in place over the cavity 56 they cooperate with the body section 46 to provide a smooth and continuous surface, that is hydrodynamic in nature.

6. Claims 18, 20, 21 and 28-31 are further rejected under 35 U.S.C. 102(e) as being anticipated by Monticello et al. (US 6,301,823).

Monticello et al. (hereafter Monticello) discloses the claimed invention as cited in claims 18, 20, 21, 26 and 28-31. Monticello's "spoon" lure comprises a body portion comprising a core 10 and a flexible coating 8. The coating 8 is formed around core 10 as shown in Figures 7A-7C, creating a cavity therein which is filled with a soft body 21. Monticello describes, in column 4, lines 43-50, how body 21 is saturated with a fish attractant and is coated by cover 8. The longitudinal planes, defined by the body portion 8 and 10 and the flexible body or scent receiving element 21, are coplanar.

Regarding claim 20, the scent receiving element 21 is readily accessible from either side once coating 8 is punctured. Regarding claim 21, element 21 is secured in the cavity by the coating 8.

Regarding claims 28-31, Monticello's lure ensures that the scent receiving element 21 is unobstructed from water flow, and that it does not interfere with the motion of the lure. The element further cooperates with the body section 8 and 10 to provide a smooth and continuous surface, that is hydrodynamic in nature.

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 23, 24, 27 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (US 4,962,609).

Walker clearly discloses the claimed invention as cited in claims 23, 24 and 32. Walker's fishing lure has a side end that has a scent receiving element 22 attached thereto and adapted to conform to the perimeter of said side end (best seen in Figure 3). The scent receiving element does not interfere with the motion of the lure, and further cooperates with the main body of the lure 11 to define a continuous and smooth surface.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mooers.

Mooers discloses the claimed invention except there is not a plurality of cavities. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to include more than one cavity since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8

Response to Arguments

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11. Applicant's arguments filed 08 August 2002 have been fully considered but they are not persuasive. Applicant argues that US Patent 6,061,947 to Mooers does not clearly anticipate the subject matter of claims 18-21, and has amended the claims to further define over Mooers. The examiner respectfully disagrees. The amended and new claims have failed to further define the limitations of the present invention over Mooers. While the applicant has added the claim language of a "spoon-like" structure and a coplanar alignment of the planes defined by the body portion and the scent receiving element, these limitations still fail to overcome the rejection under 35 U.S.C. 102(e). Mooers' lure clearly has the structure that is considered to be spoon-like. Mooers' lure comprises two body sections 44 and 46 that form a slender handle like portion at the rearward end of the lure. The front end of the body sections increase significantly in width to form a rounded front edge that could be utilized as a scoop or a spoon-like device. In response to the argument concerning the placement of planes the examiner points out that if the plane defined by Mooers' scent dispensing device is identified as lying parallel to the flat end walls of said scent dispenser 40, then it is in fact coplanar with the plane defined by the body portion 46.

To further address the amended subject matter of claims 18, 20, 21 and 28-31, another rejection was added under 35 U.S.C. 102(e) as being clearly anticipated by Monticello.

12. Applicant's arguments with respect to claims 23 and 24 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

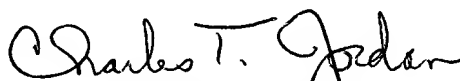
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan C. Alimenti whose telephone number is (703)306-0360. The examiner can normally be reached on Monday-Thursday, 7:30am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan can be reached on 703-306-4159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.


CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

SCA
September 5, 2002